
(2017) 03 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 4057 of 2011

Tulsidas Prabhudas Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16

Citation : (2017) LIC 1447

Hon'ble Judges : Mr. Mohinder Pal, J.

Bench : Single Bench

Advocate : P.A. Jadeja, Advocate, for the Petitioner No. 1; Mr K.M. Antani, AGP, for the Respondent(s) No. 1; Rule Served, for the Respondent No. 1 to 5

Final Decision : Allowed

Judgement

Mr. Mohinder Pal, J. (Oral)—By way of this petition under Articles 14, 16 and 226 of the Constitution of India, the petitioner has claimed medical reimbursement for the treatment of liver transplant which was done at Sir Ganga Ram Hospital, New Delhi.

2. Brief facts of this case are that petitioner was serving as a Principal of Shri M.H. Dayaram Sharda Mandir, Dabhoi, which was a Government school. On 5.1.2010, petitioner visited SSG Hospital, Baroda for the treatment of liver i.e. the deceased for which he was suffering. However such treatment was not available in this Hospital and petitioner was referred to Civil Hospital, Ahmedabad. On 7.1.2010, petitioner approached Civil Hospital, Ahmedabad. But, his request for treatment was turned down as he was diagnosed to be the case of end-stage liver disease and required liver transplant. In reference slip, he was referred to Quaternary Case Center in the Hospital. As facility of liver transplant was not available at Quaternary Case Center, he sought permission from the respondents for his treatment at Sir Ganga Ram Hospital, New Delhi. As the name of the hospital from where the petitioner wanted to have treatment, was not there in the list of the recognised hospital of the State of Gujarat. This

application came to be dismissed vide letter dated 8.2.2010 relying upon Government Resolution (GR) dated 23.8.1990. Left with no other option, petitioner got himself admitted for liver transplant at Sir Ganga Ram Hospital, New Delhi where ultimately operation was performed on 25.2.2010 and after successful operation, he was discharged on 15.4.2010. After discharged from the Hospital, petitioner submitted Essentiality Certificate along with bills issued by the Hospital to the respondents. Medical reimbursement of the petitioner came to be rejected by the respondents on the ground that he has taken treatment from a hospital which was not recognised by the State of Gujarat. Further, reasoning for rejection was that he has not approached the Quaternary Case Center, Ahmedabad, where he was referred. Representation of the petitioner dated 22.11.2010 has been returned to the school of the petitioner from where he has retired which have resulted in filing of this Special Civil Application.

3. Learned counsel for the petitioner has submitted that the disease from which the petitioner was suffering, was the peculiar disease for which treatment was available at Sir Ganga Ram Hospital, New Delhi and the same was not available in Ahmedabad. Under any circumstance, petitioner was required to take treatment from outside the State of Gujarat and Sir Ganga Ram Hospital, New Delhi being a reputed Hospital for such treatment, the petitioner has preferred this hospital. It has been submitted that before approaching Sir Ganga Ram Hospital, New Delhi, the petitioner has sought permission of the respondents for taking treatment from such hospital. However, his representation was turned down. It has been argued that Sir Ganga Ram Hospital is not on the list of recognised hospital as per GR dated 23.8.1990. However, petitioner was entitled for medical reimbursement of the necessary expenses which petitioner could have incurred if he had taken treatment from the Government Hospital.

4. In support of his arguments, he has relied upon following judgments.

(a) In the case of Ram Prakash v. State of Haryana and others made on 13.5.2015 (CWP No.22172 of 2011);

(b) In the case of Arvindkumar D.Patel v. Commissioner of Health and other made on 28th August, 2003;

(c) In the case of State of Punjab & Ors. v. Ram Lubhaya Bagga made on 26.2.1998.

5. On the other hand, learned AGP, Mr. Antani, appearing on behalf of the State has referred to the resolution dated 23.8.1990 issued by the State of Gujarat and according to which Sir Ganga Ram Hospital, New Delhi was not on the list of recognised Hospital by the State of Gujarat. Further, it has been argued that such treatment of liver transplant was available in Quaternary Case Center, Ahmedabad. However, petitioner has chosen to take treatment from the hospital at Delhi and under these circumstances, he was not entitled for reimbursement as claimed in this petition.

6. This Court has considered the submissions of both the sides. The fact that the petitioner was suffering from ailment of liver is not in dispute. It is further apparent from the documents available on file that there was no other possible treatment except liver transplant. Now, the question remains, whether such facility of liver transplant was available in Ahmedabad? It is the case of the State that such facility of liver transplant was available in the Civil Hospital, Ahmedabad. However, petitioner in place of going to that Center, has chosen to go to Delhi to take this treatment.

7. No doubt, the petitioner has been referred to Civil Hospital, Ahmedabad for the treatment but it is always satisfaction of the patient to take treatment from hospital where he has faith and where better facilities are available. From the documents available on file, it could be seen that the condition of the petitioner was such that immediate liver transplant was the only option available with the petitioner. Saving his life was the first priority for the petitioner.

8. While deciding the case of medical reimbursement regarding the treatment from private unrecognized hospital, the Hon''ble Apex Court in case of Surjit Singh v. State of Punjab and Haryana reported in 1996 (0) GLHEL-SC 31162, has held as under:

10. It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life ensbrined in Article 21 of the constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to versus 17 18, 20, and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

17 Vinaa dehena kasyaapi canpurushaartho na vidyate Tasmaaddeham dhanam rakshet-punyakarmaani saadhayet

Without the body how can one obtain the objects of human life? Therefore protecting body which is the wealth, one should perform the deeds of merit.

18 Rakshayetsarvadaatmaanam aatmasarvasya bhaajanam Rakshane yatnamaatishthejje vanbhaadraani pashyati

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

19 Sharirarakshanopaayaah Kriyante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body

20 Aatmaivayadinaatmaanamahitebhyo nivaarayet Konsyo

hitakarastasmaadaatmaanam taarayishyati

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

9. It will be further important to note that State of Gujarat has issued Government Resolution dated 26.10.2005, copy of which has been annexed by the petitioner which is available at page No.30 of the petition. According to this document, for treatment of a serious disease like liver transplant, if a person has taken treatment from private unrecognized hospital, he will be entitled to medical reimbursement of expenses regarding charges which were payable in the recognised Government Hospital.

10. Learned counsel for the petitioner has relied upon various judgments. In one of such case, Ram Prakash v. State of Haryana and others reported in CWP No.22172 of 2011, it has been held as under:

The respondents would then reimburse to the petitioner, at least that amount as would have been spent by him on such procedure, in the PGIMER, Chandigarh, within a period of 2 months from the date of issuance of such a certificate by the Competent Authority.

11. Learned counsel for the petitioner has also put reliance upon the various judgments passed by different Courts. However, it may not be necessary to mention all these judgments in view of the fact that, it is settled by now that person though having taken treatment from the private unrecognized hospital may be reimbursed the expenses which could have been payable in the Government Hospital, had he taken treatment from such hospital.

12. Learned counsel for the petitioner has informed that all the documents and bills regarding expenses incurred on the treatment by the petitioner has been submitted to the respondent-authorities which were returned by them to the school from where the petitioner has retired.

13. In view of the foregoing discussion, this petition is allowed. The bills submitted by the petitioner which at present may be lying with the school will be resubmitted to the concerned respondent-authorities who will calculate the actual expenses of treatment which petitioner could have incurred had he taken treatment from Government Hospital, Ahmedabad, and necessary formalities will be completed within a period of 2 months and petitioner will be paid medical reimbursement accordingly, along with 7% interest per annum from the date of application till realization of the amount. Rule is made absolute.